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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DZ RESERVE, and CAIN MAXWELL (d/b/a  
MAX MARTIALIS), individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:18-cv-04978-JD

**JOINT SUBMISSION OF PROPOSED  
VERDICT FORMS**

Trial Date: October 14, 2025  
Judge: Hon. James Donato  
Courtroom: 11 – 19th Floor, SF

1 Pursuant to the Court's Standing Order for Civil Jury Trials Before Judge James Donato  
2 and the Pretrial Order (ECF No. 478), the Parties hereby submit the following set of proposed  
3 Verdict Forms, one proposed by Plaintiffs and one proposed by Defendant, as well as the parties'  
4 respective position statements as to why their proposed questions should be adopted.  
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**PLAINTIFFS’ PROPOSED VERDICT FORM**

When answering the following questions and filling out this Verdict Form, please follow the instructions provided throughout the form. Your verdict must be unanimous.

We, the jury, return these answers as our verdict in this case:

### **SECTION A: FRAUDULENT MISREPRESENTATION**

#### **Question No. 1:**

Did **Meta** make a false representation of fact to **Class Members** regarding **Potential Reach**?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 1 is “Yes,” then answer Question 2. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

#### **Question No. 2:**

Did **Meta** know that the representation was false, or did **it** make the representation recklessly and without regard for its truth?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 2 is “Yes,” then answer Question 3. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

#### **Question No. 3:**

Did **Meta** intend that **Class Members** rely on the representation?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 3 is “Yes,” then answer Question 4. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

#### **Question No. 4:**

Did **Class Members** reasonably rely on the representation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question 4 is “Yes,” then answer Question 5. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.

**Question No. 5:**

Was **Class Members’** reliance on **Meta’s** representation a substantial factor in causing **them** harm?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question 5 is “Yes,” then answer Question 6. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.

**SECTION B: FRAUDULENT CONCEALMENT**

**Question No. 6:**

Did **Meta** intentionally fail to disclose a fact— **that Potential Reach was inflated because the number of unique accounts exceeded the number of unique people** —that **Class Members** did not know and could not reasonably have discovered?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question 6 is “Yes,” then answer Question 7. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section C.

**Question No. 7:**

Did **Meta** intend to deceive **Class Members** by concealing the fact?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question 7 is “Yes,” then answer Question 8. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section C.

**Question No. 8:**

Had the omitted information been disclosed, would **Class Members** reasonably have behaved differently?

Yes \_\_\_\_\_ No \_\_\_\_\_

1                   If your answer to Question 8 is “Yes,” then answer Question 9. If you  
2                   answered “No,” stop here, answer no further questions regarding this claim,  
3                   and continue to Section C.

4                   **Question No. 9:**

5                   Was [Meta’s](#) concealment a substantial factor in causing harm to [Class Members](#)?

6                   Yes \_\_\_\_\_ No \_\_\_\_\_

7                   If you answered “YES” Question 5 and/or Question 9, continue to Section C.

**Section C: DAMAGES**

**COMPENSATORY DAMAGES**

**Question No. 10:**

What is the amount of damages that Class Members are entitled to recover?

\$ \_\_\_\_\_

**PREJUDGMENT INTEREST**

**Question No. 11:**

For any amount awarded to Class Members in Question 10, do you also award Class Members prejudgment interest?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If you answered “yes” to Question 11, please identify the starting date from which Class Members are owed prejudgment interest?

Month and year: \_\_\_\_\_

**PUNITIVE DAMAGES**

**Question No. 12:**

Did Meta act with malice, fraud, or oppression in the conduct on which you base your finding of liability?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, what amount of “punitive damages” if any would you require Meta to pay?

\$ \_\_\_\_\_

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2 You have now reached the end of the verdict form and should review it to ensure it accurately  
3 reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict  
4 form in the spaces below and notify the courtroom deputy that you have reached a verdict. The  
5 Presiding Juror should retain possession of the verdict form and bring it when the jury is brought  
6 back into the courtroom.

7 DATED: \_\_\_\_\_

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**META’S PROPOSED VERDICT FORM**

When answering the following questions and filling out this Verdict Form, please follow the instructions provided throughout the form. Your verdict must be unanimous.

We, the jury, return these answers as our verdict in this case:

### **SECTION A: FRAUDULENT MISREPRESENTATION**

#### **Question No. 1:**

Did Facebook~~[name of defendant]~~ make a false representation of ~~fa~~ fact~~s~~ to DZ Reserve and Cain Maxwell~~[name of plaintiff]~~ by substituting people for accounts in describing Potential Reach estimates?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 1 is “Yes,” then answer Question 2. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

#### **Question No. 2:**

Did Facebook~~[name of defendant]~~ know that the representation was false, or did it ~~he/she/nonbinary pronoun~~ make the representation recklessly and without regard for its truth?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 2 is “Yes,” then answer Question 3. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

#### **Question No. 3:**

Did Facebook~~[name of defendant]~~ intend that DZ Reserve and Cain Maxwell~~[name of plaintiff]~~ rely on the representation?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 3 is “Yes,” then answer Question 4. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section B.**

**Question No. 4:**

Did DZ Reserve and Cain Maxwell ~~f[name-of-plaintiff]~~ reasonably rely on the representation?

DZ Reserve: Yes \_\_\_\_\_ No \_\_\_\_\_

Cain Maxwell: Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question 4 is “Yes” for DZ Reserve or Cain Maxwell, then answer Question 5. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to **Section B.**

**Question No. 5:**

Was DZ Reserve’s and Cain Maxwell’s ~~f[name-of-plaintiff]~~’s reliance on Facebook’s ~~f[name-of-defendant]~~’s representation a substantial factor in causing them harm ~~to f[name-of-plaintiff]~~?

DZ Reserve: Yes \_\_\_\_\_ No \_\_\_\_\_

Cain Maxwell: Yes \_\_\_\_\_ No \_\_\_\_\_

Continue to **Section B.**

**Sources:** CACI VF-1900 (as modified in blue); *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223, 1235 (9th Cir. 2024) (identifying the “claimed misrepresentation” as “the substitution of people for accounts”); *id.* at 1234 (rejecting idea “that the misrepresentation is the numerical discrepancy between people and accounts, rather than the fact that Meta substituted people for accounts”).

**SECTION B: FRAUDULENT CONCEALMENT****Question No. 6:**

Did Facebook ~~[name-of-defendant]~~ intentionally fail to disclose ~~[a]~~ fact~~[s]~~—that it substituted people for accounts in describing Potential Reach estimates—that DZ Reserve and Cain Maxwell ~~[name-of-plaintiff]~~ did not know and could not reasonably have discovered?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 6 is “Yes,” then answer Question 7. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section C.**

**Question No. 7:**

Did Facebook ~~[name-of-defendant]~~ intend to deceive DZ Reserve and Cain Maxwell ~~[name-of-plaintiff]~~ by concealing the fact?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 7 is “Yes,” then answer Question 8. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section C.**

**Question No. 8:**

Had the omitted information been disclosed, would DZ Reserve and Cain Maxwell ~~[name-of-plaintiff]~~ reasonably have behaved differently?

**DZ Reserve:** Yes \_\_\_\_\_ No \_\_\_\_\_

**Cain Maxwell:** Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 8 is “Yes,” then answer Question 9. If you answered “No,” stop here, answer no further questions regarding this claim, and continue to Section C.**

**Question No. 9:**

Was Facebook’s ~~[name-of-defendant]~~’s concealment a substantial factor in causing harm to DZ Reserve and Cain Maxwell ~~[name-of-plaintiff]~~?

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**DZ Reserve:** Yes \_\_\_\_\_ No \_\_\_\_\_

**Cain Maxwell:** Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 5 and/or Question 9 is “Yes” for either DZ Reserve or Cain Maxwell, continue to Section C.**

**Sources:** [CACI VF-1901](#) (as modified in [blue](#)); *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223, 1235 (9th Cir. 2024) (identifying the “claimed misrepresentation” as “the substitution of people for accounts”); *id.* at 1234 (rejecting idea “that the misrepresentation is the numerical discrepancy between people and accounts, rather than the fact that Meta substituted people for accounts”).

**Section C: DAMAGES****COMPENSATORY DAMAGES****Question No. 10:**

What are DZ Reserve's and Cain Maxwell's ~~name of plaintiff~~'s damages?

DZ Reserve: \$ \_\_\_\_\_

Cain Maxwell: \$ \_\_\_\_\_

~~a. Past economic loss~~

~~lost earnings~~ \$ \_\_\_\_\_

~~lost profits~~ \$ \_\_\_\_\_

~~medical expenses~~ \$ \_\_\_\_\_

~~other past economic loss~~ \$ \_\_\_\_\_

~~Total Past Economic Damages:~~ \$ \_\_\_\_\_

~~b. Future economic loss~~

~~lost earnings~~ \$ \_\_\_\_\_

~~lost profits~~ \$ \_\_\_\_\_

~~medical expenses~~ \$ \_\_\_\_\_

~~other future economic loss~~ \$ \_\_\_\_\_

~~Total Future Economic Damages:~~ \$ \_\_\_\_\_

~~c. Past noneconomic loss, including [physical pain/mental suffering:]~~

~~\$ \_\_\_\_\_~~

~~d. Past noneconomic loss, including [physical pain/mental suffering:]~~

~~\$ \_\_\_\_\_~~

~~TOTAL~~ \$ \_\_\_\_\_

**PUNITIVE DAMAGES****Question No. 11:**

Did an agent or employee of Facebook ~~name of defendant~~ engage in the conduct for which you found liability with malice, oppression, or fraud?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 11 is "Yes," answer Question 12. If you answered "No," stop here, answer no further questions regarding damages, and continue to Section D.**

**Question 12:**

1 Did one or more officers, ~~directors, or managing agents~~ of Facebook ~~[name of defendant]~~  
2 authorize this conduct?

3 Yes \_\_\_\_\_ No \_\_\_\_\_  
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5 **Continue to Section D.**

6 **Source:** CACI VF-3904 (as modified in blue)  
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**Section D: UNCLEAN HANDS – Affirmative Defense to DZ Reserve’s Claims**

Answer these questions only if you have entered damages for DZ Reserve in response to Question No. 10.

**Question No. 13:**

Did DZ Reserve act unconscionably in connection with its dealings with Facebook?

Yes \_\_\_\_\_ No \_\_\_\_\_

**If your answer to Question 12 is “Yes,” then answer Question 13. If you answered “No,” then go to the end of the form.**

**Question No. 14:**

Did DZ Reserve’s conduct result in prejudice to Facebook?

Yes \_\_\_\_\_ No \_\_\_\_\_

**Go to the end of the form.**

**Sources:** Matthew Bender, California Forms of Jury Instruction No. [300F.29](#) (2025) (“To establish this defense, Defendant must prove that Plaintiff’s conduct was unconscionable and resulted in prejudice to defendant.”); *see GSI Technology, Inc. v. United Memories, Inc.*, Case No. 5:13-cv-01081 (N.D. Cal. Nov. 22, 2015), Dkt. 1044.



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You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict form in the spaces below and notify the courtroom deputy that you have reached a verdict. The Presiding Juror should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

DATED:

Signed:

Presiding Juror

**Proposed Verdict Form Questions for Fraudulent Misrepresentation**

**Plaintiffs' Position**

Plaintiffs agree with Meta on the elements of this claim, as set forth by the Judicial Council of California Civil Jury Instructions (CACI), but oppose the language Meta uses to characterize the representation in the first element. The representation at issue in this case is straightforward—it's the representation of Potential Reach on Meta's Ads Manager platform. But Meta again uses this verdict form to improperly narrow the representation to the substitution of people for accounts, without any regard for the inflation that caused Meta to "charge[] artificially high premiums for ad placements." ECF No. 388 at 1. Meta's proposal contradicts the Court's class certification order, *id.*, and the Court's approval of Plaintiffs' Unopposed Class Notice, which stated that "Plaintiffs allege Facebook inflated its potential advertising reach to consumers, and charged artificially high premiums for ad placements." ECF No. 470-1. Meta's proposed verdict form is therefore unduly restrictive, confusing, and overly complicated.

The parties also continue to disagree about whether Plaintiffs should be referred to as "DZ Reserve and Cain Maxwell" or simply "Class Members." Because this case is proceeding as a certified class action, the jury's focus should be on the claims and evidence as they apply to the class as a whole. Meta's claim that individualized evidence will be required for liability ignores that this Court already certified this as a class action, and the Ninth Circuit affirmed it as such. ECF No. 388; *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1241 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1051, 220 L. Ed. 2d 381 (2025). References to the individual named plaintiffs risk creating confusion regarding common issues certified for class treatment. The jury should determine whether the elements are satisfied as to "Class Members," including the individual named plaintiffs.

Lastly, Plaintiffs respectfully disagree that the verdict form should refer to the Defendant as "Facebook," and not "Meta." While it is true that Defendant announced its new corporate name one day after the close of the class period, at all points of that class period the entity now known as Meta owned and operated Instagram and other platforms. Central to Plaintiffs' allegations is

1 that individuals had multiple accounts on both the Instagram and Facebook platforms (“single  
2 user/multiple accounts or SUMA” in Meta’s parlance.) While the parties should be free at trial to  
3 refer to Defendant as Facebook or Meta as circumstances may warrant, the jury’s focus should  
4 remain squarely on the corporate actor that perpetrated the alleged harms, not on what is now just  
5 one of its many product verticals.  
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1 **Meta's Position**

2 Meta objects to two aspects of Plaintiffs' proposed Fraudulent Misrepresentation  
3 questions.

4 *First*, Plaintiffs' proposal does not identify the relevant alleged misrepresentation, asking  
5 only whether Meta made a "false representation of fact ... regarding Potential Reach." As  
6 explained with respect to Disputed Instructions No. 2 and 16, there is only *one* representation that  
7 has been certified for class treatment: "the fact that Meta substituted people for accounts" in  
8 describing Potential Reach. *DZ Rsr.*, 96 F.4th at 1234. The verdict form must identify that  
9 alleged misrepresentation to avoid jury confusion and direct the jury's focus to the only  
10 representation accepted for class treatment, especially given that Plaintiffs continue to press an  
11 "inflation" theory—*i.e.*, a "numerical discrepancy" theory—independent of the substitution-of-  
12 people-for-accounts theory that was certified for class treatment.  
13

14 *Second*, Plaintiffs' proposed questions reference "Class Members" instead of Plaintiffs DZ  
15 Reserve and Cain Maxwell. As explained with respect to Disputed Instruction No. 16, DZ Reserve  
16 and Maxwell must—in their representative capacities—actually prove each element of the claims  
17 as to themselves, in addition to providing classwide proof as to all class members. Referencing  
18 "Class Members," rather than DZ Reserve and Maxwell, will confuse the jury as to whether it  
19 must assess the elements of the claim with respect to the named Plaintiffs or only some or all of  
20 the Class. This is especially important with respect to the elements of reliance and resulting harm  
21 (*i.e.*, harm causally linked to reliance), because a jury could easily find that DZ Reserve and/or  
22 Cain Maxwell did *not* rely on any alleged misrepresentation. Accordingly, Meta's proposed  
23 questions properly reflect that the jury must assess reliance and resulting harm as to each named  
24 Plaintiff's claim.  
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1           Moreover, the jury cannot reach a definitive liability finding for all class members in this  
2 trial, because key elements—namely, reliance and harm causally linked to reliance—will require  
3 further, individualized proceedings. As the Ninth Circuit recognized, Meta retains the right to  
4 rebut reliance as to each class member. *DZ Rsrvc.*, 96 F.4th at 1237 (acknowledging that rebuttal  
5 “has the effect of leaving individualized questions of reliance in the case” (citation omitted)); *see*  
6 *also Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951, 977 (1997), as modified (July 30,  
7 1997); *Vasquez v. Superior Ct.*, 4 Cal. 3d 800, 814 (1971). Meta cannot be deprived of its due  
8 process and Seventh Amendment rights to do so, and any other outcome would improperly abridge  
9 Meta’s rights contrary to the Rules Enabling Act. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,  
10 367 (2011).  
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12           *Third*, Plaintiffs admit that Meta’s corporate name was Facebook throughout the entire  
13 class period, so unsurprisingly, documents and witnesses all discuss Facebook. Referring to  
14 Facebook as the corporate actor on the verdict form is not only accurate but will also avoid  
15 confusion.  
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**Proposed Verdict Form Questions for Fraudulent Concealment**

**Plaintiffs' Position**

As discussed above, Plaintiffs agree with Meta on the elements of this claim, as set forth by the Judicial Council of California Civil Jury Instructions (CACI) but oppose the language Meta uses to characterize the concealment in the first element. The concealment at issue is that Potential Reach was inflated because the number of unique accounts exceeded the number of unique people. But Meta again uses this verdict form to improperly narrow the concealment to the substitution of people for accounts, without any regard for the inflation that caused Meta to “charge[] artificially high premiums for ad placements.” ECF No. 388 at 1. Meta’s proposal contradicts the Court’s class certification order, *id.*, and the Court’s approval of Plaintiffs’ Unopposed Class Notice, which stated that “Plaintiffs allege Facebook inflated its potential advertising reach to consumers, and charged artificially high premiums for ad placements.” ECF No. 470-1. Meta’s proposed verdict form is therefore unduly restrictive, confusing, and overly complicated.

The parties also continue to disagree about whether Plaintiffs should be referred to as “DZ Reserve and Cain Maxwell” or simply “Class Members.” Because this case is proceeding as a certified class action, the jury’s focus should be on the claims and evidence as they apply to the class as a whole. Meta’s claim that individualized evidence will be required for liability ignores that this Court already certified this as a class action, and the Ninth Circuit affirmed it as such. ECF No. 388; *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1241 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1051, 220 L. Ed. 2d 381 (2025). References to the individual named plaintiffs risk creating confusion regarding common issues certified for class treatment. The jury should determine whether the elements are satisfied as to “Class Members,” including the individual named plaintiffs.

1 **Meta's Position**

2 Meta objects to two aspects of Plaintiffs' proposed Fraudulent Concealment questions.

3 *First*, Plaintiffs' proposal mischaracterizes the alleged concealment certified for class  
4 treatment. Plaintiffs' proposed language focuses on the purported failure to disclose "that Potential  
5 Reach was inflated because the number of unique accounts exceeded the number of unique  
6 people." But that language refers to a theory the Ninth Circuit expressly did *not* accept for class  
7 treatment. As the Ninth Circuit explained, the "common" alleged misrepresentation is *not* "the  
8 numerical discrepancy between people and accounts," which indisputably varied across  
9 advertisers. *DZ Rsrv.*, 96 F.4th at 1234-35; *id.* at 1231. Rather, it is the alleged "substitution of  
10 people for accounts." *Id.* at 1235. Plaintiffs' proposal thus improperly invites the jury to find  
11 liability based on the theory that Meta committed fraud because the "numerical value" of Potential  
12 Reach estimates was too high. *Id.* That invitation conflicts with the Ninth Circuit's decision  
13 affirming this Court.  
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16 *Second*, as discussed above, the questions reference "Class Members," not named Plaintiffs  
17 DZ Reserve and Cain Maxwell. But DZ Reserve and Maxwell must—in their representative  
18 capacities—actually prove each element of the claims as to themselves, in addition to presenting  
19 classwide proof as to all class members. Referencing "Class Members," rather than DZ Reserve  
20 and Maxwell, will confuse the jury as to whether it must assess the elements of the claim with  
21 respect to the named Plaintiffs or only some or all of the Class. Again, this is especially important  
22 with respect to the elements of reliance and resulting harm, because a jury could easily find that  
23 DZ Reserve and/or Cain Maxwell did *not* rely on any alleged concealment. Accordingly, Meta's  
24 proposed questions properly reflect that the jury must assess reliance and resulting harm as to each  
25 named Plaintiff's claim.  
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1           Moreover, the jury cannot reach a definitive liability finding for all class members in this  
2 trial, because key elements—namely, reliance and harm causally linked to reliance—will require  
3 further, individualized proceedings. As the Ninth Circuit recognized, Meta retains the right to  
4 rebut reliance as to each class member. *DZ Rsrvc.*, 96 F.4th at 1237 (acknowledging that rebuttal  
5 “has the effect of leaving individualized questions of reliance in the case” (citation omitted)); *see*  
6 *also Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951, 977 (1997), as modified (July 30,  
7 1997); *Vasquez v. Superior Ct.*, 4 Cal. 3d 800, 814 (1971). Meta cannot be deprived of its due  
8 process and Seventh Amendment rights to do so, and any other outcome would improperly abridge  
9 Meta’s rights contrary to the Rules Enabling Act. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,  
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**Proposed Verdict Form Questions for Damages**

**Plaintiffs' Position**

This is a class action trial. *See DZ Rsrv. v. Meta Platforms, Inc.*, 2022 WL 912890 (N.D. Cal. Mar. 29, 2022), *aff'd*, 96 F.4th 1223 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1051, 220 L. Ed. 2d 381 (2025). The verdict form should give the jury a straightforward task: to determine one number for compensatory damages and, if so instructed, one number for punitive damages. Meta's proposed form has no grounding in law or practice. It instead invents a framework requiring the jury to return separate damages awards for each named plaintiff on two distinct claims. And it eliminates the jury's ability to award classwide damages, which is completely antithetical to the jury's task in a class action trial. *See, e.g., In re Pharm. Indus. Average Wholesale Price Litig.*, 582 F.3d 156, 197 (1st Cir. 2009) ("The use of aggregate damages calculations is well established in federal court and implied by the very existence of the class action mechanism itself."); *In re Disk Drive Suspension Assemblies Antitrust Litig.*, 2025 WL 71988, at \*22 (N.D. Cal. Jan. 10, 2025) (same). Meta's proposed form overcomplicates this task, risks confusing the jury, and is inconsistent with the law. The jury is not charged with determining compensation for the named plaintiffs. The jury's role is to return a single aggregate damages award, and any service awards are left to the sole discretion of the Court.

1 **Meta's Position**

2 Plaintiffs' proposed question for compensatory damages is not permissible. Plaintiffs  
3 propose asking the jury to award a lump sum of "damages that Class Members are entitled to  
4 recover." But that is not possible in this trial, because liability cannot be definitively resolved for  
5 the Class given individualized issues like reliance that will need to be resolved in later  
6 proceedings—as explained above and with respect to Disputed Instructions No. 16-17. There is  
7 thus no way for the jury to know the total number of advertisers for whom they would purportedly  
8 be calculating damages. Accordingly, while aggregate damages may be appropriate in *some* class  
9 actions, they are not appropriate here. Meta's proposal thus properly limits the damages awarded  
10 to DZ Reserve and Cain Maxwell, until remaining individualized issues are resolved in later  
11 proceedings.  
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**Proposed Verdict Form Questions for Unclean Hands**

**Plaintiffs' Position**

Plaintiffs oppose any mention of this affirmative defense on the verdict form.

To shift focus away from its own fraudulent conduct, Meta now raises an affirmative defense of “unclean hands” against class representative DZ Reserve on the grounds that it allegedly “violated Meta’s Terms of Use by purchasing advertisements through others’ accounts.” Meta can satisfy *none* of the elements of an unclean hands defense as to the fraudulent misrepresentation and fraudulent concealment claims, and, even if it could, Plaintiff DZ Reserve did not violate Meta’s Terms of Use. Accordingly, the Court should decline to give this instruction.

“To establish unclean hands, a defendant must demonstrate (1) inequitable conduct by the plaintiff; (2) that the plaintiff’s conduct directly relates to the claim which it has asserted against the defendant; and (3) plaintiff’s conduct injured the defendant.” *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1223 (C.D. Cal. 2007) (internal citation omitted). Meta can demonstrate none of these elements.

First, DZ Reserve’s alleged purchase of advertising through the accounts of others is not conduct courts have held can support a defense of unclean hands. “We have stated that only a showing of wrongfulness, willfulness, bad faith, or gross negligence, proved by clear and convincing evidence, will establish sufficient culpability for invocation of the doctrine of unclean hands.” *Pfizer, Inc. v. Int’l Rectifier Corp.*, 685 F.2d 357, 359 (9th Cir. 1982). “Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. [Citations omitted.]” *Fibreboard Paper Prods. Corp. v. East Bay Union of Machinists* 227 Cal.App.2d 675, 727 (1964) (citations omitted). Meta’s fulminations notwithstanding, paying it to place advertisements through other people’s accounts is far from the kind of egregious conduct that could support such an instruction.

Second, “It is fundamental to [the] operation of the doctrine that the alleged misconduct by the plaintiff relate directly to the transaction concerning which the complaint is made.” *Arthur v. Davis*, 126 Cal.App.3d 684, 693–94, (1981) (quotation omitted). There is no relationship between

1 a customer's use of another's account to purchase advertisements and the fraudulent  
2 misrepresentations for which Meta stands trial. The alleged violations of Facebook's Terms of Use  
3 are, at very worst, mere "extraneous transgressions" or "misconduct in the abstract, unrelated to  
4 the claim to which it is asserted as a defense." *Republic Molding Corp. v. B. W. Photo Utils.* 319  
5 F.2d 347, 349-50 (9th Cir. 1963); *see also Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d  
6 165, 173 (9th Cir. 1989) (finding alleged failure to perform under a franchise agreement unrelated  
7 to party's right to rescind that agreement).

8 Third, Meta was uninjured by the alleged purchase of advertising on its platforms. The  
9 unclean hands defense requires proof that plaintiff "has injured the party attempting to invoke the  
10 doctrine." *PenneCom B.V. v. Merrill Lynch & Co., Inc.*, 372 F.3d 488, 493 (2d Cir. 2004); *Infineon*  
11 *Techs. AG v. Volterra Semiconductor Corp.*, 2013 WL 1832558, at \*4 (N.D. Cal. May 1, 2013).  
12 Meta cannot plausibly argue that it was injured by the money it accepted to run advertisements.  
13 To the contrary, as in *Broderbund Software Inc. v. Unison World, Inc.* "[f]ar from being injured  
14 [by the alleged inequitable conduct] . . . defendant may have profited from it." 648 F. Supp. 1127,  
15 1138 (N.D. Cal. 1986).

16 Meta will have an opportunity at trial (as it did at his deposition) to question DZ Reserve  
17 owner Dan Ziernicki about all of the purchases he allegedly made on their platforms. But because  
18 the alleged conduct is far from inequitable, substantively unrelated to the allegations at issue, and  
19 caused no injury to defendant, DZ Reserve's hands are clean. Accordingly, the Court should  
20 exercise its discretion and decline to give this jury instruction.

1 **Meta's Position**

2 For the same reasons set forth with respect to the jury instructions, the unclean hands  
 3 defense must be submitted to the jury. The unclean hands doctrine “demands that a plaintiff act  
 4 fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and  
 5 keep them clean, or he will be denied relief, regardless of the merits of his claim.” *DD Hair  
 6 Lounge, LLC v. State Farm Gen. Ins. Co.*, 20 Cal. App. 5th 1238, 1246 (2018). Unclean hands is  
 7 a question for the jury where, as here, it is “so intertwined with legal claims that [the issue] cannot  
 8 be separately tried to the judge.” *Unilogic v. Burroughs Corp.*, 10 Cal. App. 4th 612, 622-23  
 9 (1992); *e.g., Consumer Direct, Inc. v. Pentius, LLC*, No. 8:21-cv-01968, Dkt. 519 at 6 (C.D. Cal.  
 10 July 19, 2024) (unclean hands properly submitted to the jury because “adjudication of [the] legal  
 11 claim” “necessarily required the jury to determine” issues of “fact and credibility” relevant to  
 12 unclean hands defense). Plaintiffs do not dispute that unclean hands is a jury question in this case.  
 13 Rather, they attempt to pre-try the issue to eliminate it altogether. Those efforts fail.

14 “Any conduct that violates conscience, or good faith, or other equitable standards of  
 15 conduct is sufficient cause to invoke the doctrine.” *Padideh v. Moradi*, 89 Cal. App. 5th 418, 444  
 16 (2023) (emphasis added). Plaintiffs’ case, *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*,  
 17 518 F. Supp. 2d 1197, 1223 (C.D. Cal. 2007), does not purport to apply California law and instead  
 18 involves a federal copyright claim. But under any standard, the conduct here suffices. DZ Reserve  
 19 owner Dan Ziernicki violated Meta’s Terms of Service and Community Standards, which allow  
 20 people to create only one account and prohibit impersonating another person on Facebook. Mr.  
 21 Ziernicki repeatedly purchased ads through other people’s accounts, and he tried to do so through  
 22 covert means—including buying a Facebook account through a forum selling accounts, using his  
 23 girlfriend’s Facebook account, and using a friend’s account to buy ads. Mr. Ziernicki attempted  
 24 to conceal those accounts and additional ad purchases during discovery—all while simultaneously  
 25 alleging that DZ Reserve “would have purchased fewer (if any) Facebook advertisements” had it  
 26 known Potential Reach estimates could be impacted by fake or duplicate accounts. Third Am.  
 27 Compl. ¶¶ 147, 159; *see also* Opp. to Class Cert., Dkt. 362 at 18; Mot. for Summ. J., Dkt. 372 at  
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1 18. That is precisely the kind of “bad faith[] or inequitable conduct” that can support an unclean-  
2 hands defense. *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 974  
3 (N.D. Cal. 2013) (citation omitted); *see, e.g., Padideh*, 89 Cal. App. 5th at 445 (“lack of candor or  
4 falsity in [a] deposition” supported unclean hands).

5 Plaintiffs are also wrong to argue that DZ Reserve’s inequitable conduct is unconnected to  
6 its claims against Meta and did not harm Meta. Whether DZ Reserve’s owner continued to  
7 covertly buy Facebook ads even as DZ Reserve told this Court that it would have purchased fewer  
8 (or no) Facebook ads had it known Potential Reach was allegedly misleading goes to the heart of  
9 DZ Reserve’s fraud claims. What is more, DZ Reserve’s owner’s “lack of candor or lying” about  
10 subsequent ad purchases “affect[ed] [Meta’s] litigation decisions” and conduct, because of the  
11 additional effort for Meta to uncover the truth—including securing an order from this Court for  
12 documents revealing his covert purchases. *Padideh*, 89 Cal. App. 5th at 447. That kind of  
13 litigation-related harm supports an unclean-hands defense under California law. *See id.* at 447-50;  
14 *DD Hair Lounge*, 20 Cal. App. 5th at 1246 (applying unclean hands to bar relief where litigant  
15 “conceal[ed]” a relevant fact and “then engag[ed] in [a] time-consuming charade”). It is enough  
16 to show that “the misconduct ... occurred in a transaction or matter directly related to and infecting  
17 the one presently before the court, and that it has affected the equitable relationship between the  
18 litigants.” *Padideh*, 89 Cal. App. 5th at 450. “No further prejudice or harm is required.” *Id.* That  
19 standard is met here, and Meta’s unclean hands defense should therefore be submitted to the jury.  
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1                                    **Proposed Verdict Form Questions for Prejudgment Interest**

2                    **Plaintiffs' Position:**

3                    The jury has discretion to award prejudgment interest under California law. *See* Cal. Civ.  
4 Code § 3288; *Garrison v. Ringgold*, 2020 WL 13189480, at \*7 (S.D. Cal. Nov. 9, 2020) (“In a  
5 case of fraud, an award of prejudgment interest is necessary to put the plaintiff in a position that  
6 she would have been in, had the fraud not occurred.”). Plaintiffs’ proposed verdict form presents  
7 the jury with this choice.

8                    Meta makes the baseless argument that “it is not feasible for the jury to adjudicate on a  
9 classwide basis the underlying facts required to award prejudgment interest.” But this overlooks  
10 the fundamental reality that this is a class action trial. *See DZ Rsrv. v. Meta Platforms, Inc.*, 2022  
11 WL 912890 (N.D. Cal. Mar. 29, 2022), *aff’d*, 96 F.4th 1223 (9th Cir. 2024), *cert. denied*, 145 S.  
12 Ct. 1051, 220 L. Ed. 2d 381 (2025). Indeed, Rule 23 is designed to permit class actions where  
13 “the questions of law or fact common to class members predominate over any questions affecting  
14 only individual members” and where a class action is “superior to other available methods for  
15 fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). And at its core,  
16 Rule 23 is a mechanism for exactly these types of issues.

1 **Meta's Position**

2 As explained with respect to Plaintiffs' proposed jury instruction, prejudgment interest  
3 should not be submitted to the jury because Plaintiffs failed to request such relief in their  
4 complaint. But at minimum, prejudgment interest cannot be submitted as to the Class and must  
5 be limited to DZ Reserve and Cain Maxwell because it is not feasible for the jury to adjudicate on  
6 a classwide basis the underlying facts required to award prejudgment interest. Plaintiffs' proposal  
7 would ask the jury to "identify the starting date from which Class Members are owed prejudgment  
8 interest." But prejudgment interest "is computed from the date on which **each loss** was incurred."  
9 CACI 3935 (emphasis added). The jury may not select an arbitrary date from which to run  
10 prejudgment interest for **all class members**, who purchased ads over the course of more than six  
11 years. Plaintiffs' verdict form is modeled after the form in *Monahan Pacific Corp. v. Travelers*  
12 *Property Casualty Co.*, No. 22-cv-03593-JD (N.D. Cal.). But that case was not a class action and  
13 thus implicated none of the problems here.  
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**Proposed Verdict Form Questions for Punitive Damages**

**Plaintiffs' Position**

If the Court permits the issue of punitive damages to go before the jury, the verdict form should include a simple yes/no question on whether punitive damages are warranted, followed by a single line for the jury to state the amount of punitive damages awarded.

1 **Meta's Position**

2       Meta's proposal follows CACI VF-3904, the applicable verdict form for punitive damages  
3 involving an entity defendant like Meta, for all questions pertinent to entitlement to punitive  
4 damages. As explained with respect to Plaintiffs' proposed punitive damages instruction, Meta  
5 believes that the amount of punitive damages to which DZ Reserve and Maxwell are entitled  
6 should be bifurcated and resolved in a separate proceeding by the same jury, if the jury returns a  
7 liability verdict in favor of either of them. In addition, the amount of punitive damages to which  
8 the Class is entitled cannot be resolved until all liability issues have been resolved and the number  
9 of Class Members eligible to recover compensatory damages has been determined. Accordingly,  
10 only the question of whether punitive damages should be awarded should be submitted in this  
11 phase.

1 Dated: September 4, 2025

Respectfully submitted,

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